



Advanced
TelCom
Group, Inc.

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APR 26 2000

April 26, 2000

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Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204-F
Washington, DC 20554

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Re: Comments to Notice of Proposed Rulemaking in the Matter of the
4.9 Ghz Band Transferred from Federal Government Use
WT Docket No. 00-32

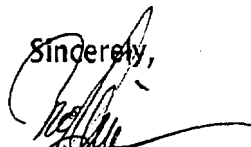
Dear Ms. Salas:

On behalf of Advanced TelCom Group, Inc., we hand you herewith an original and four copies of Comments to Notice of Proposed Rulemaking for filing in the above referenced matter.

Please date stamp the enclosed additional copy of the submission to evidence your receipt and return it to our courier.

If you should have any question regarding this matter, please contact the undersigned.

Sincerely,



Richard H. Levin

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of
the 4.9 GHz Band Transferred from
Federal Government Use

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WT Docket No. 00-32

COMMENTS OF ADVANCED TELCOM GROUP
TO NOTICE OF PROPOSED RULEMAKING

APR 28 2000

Advanced TelCom Group, Inc. ("ATG"), is a local Internet and telephone company founded in 1998, which provides service to medium sized communities in several states. Utilizing its own digital network, ATG provides local telephone, domestic and international long distance service, Internet and data services, including DSL technology, and other enhanced voice services. ATG is also utilizing fixed microwave technologies to provide data and voice services to customers. Therefore, ATG has a real and direct interest in the subject matter of this proceeding.

Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, ATG hereby submits its initial comments in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM")¹ in these proceedings.

I. ATG agrees that allocating the 4.9GHz spectrum for fixed and mobile use is in the public interest and that this spectrum should not contain use restrictions.

The Commission seeks comment on its proposal to permit any fixed or non-aeronautical mobile service use in the 4.9 GHz band, rather than to specify this band for particular uses.²

ATG agrees with the Commission's proposal allowing flexible use of this spectrum. Flexible

¹ *In the Matter of The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32 (rel. Feb. 29, 2000)[hereinafter cited as "NPRM"].

² See NPRM, at ¶ 19.

use of the spectrum will encourage investment and bring a variety of services to the public. Technology is changing at a rapid pace and flexible use of the spectrum will allow licensees to change the services that they provide to the public as advances in technology are made. Thus, ATG believes that placing limitations on the use of this spectrum would not be in public interest.

II. The Commission should impose some reasonable restrictions on eligibility to obtain a license in the 4.9GHz band.

The Commission seeks comment on their tentative conclusion that no restrictions, other than foreign ownership restrictions should be imposed on eligibility for licenses in the 4.9 GHz band.³ ATG believes that the Commission should limit eligibility to those applicants that do not hold a license for any other wireless services, with the exception of point-to-point licenses, for the same market area in the 4.9 GHz band. This reasonable restriction would prevent these licensees from monopolizing the wireless spectrum in any given market, which supports the Commission's Policy Statement goal of enhancing competition and encouraging the development of emerging telecommunications technologies.⁴ In addition, this restriction would further the Commission's goal of fostering competition by allowing other entities to enter the wireless market.⁵

III. The Commission should use a geographic area that will ensure that service will be provided to all citizens

The Commission seeks comment on the appropriate geographic area to use for licensing the 4.9 GHz band.⁶ The Commission has proposed using Economic Areas ("EAs") as the geographic boundaries for such licenses. ATG respectfully submits that the use of EAs will not ensure that services are provided to less densely populated areas. Because EAs include major cities as well as less densely populated areas, ATG believes that the winning bidders are likely to

³ See *NPRM*, at ¶ 34.

⁴ See FCC Press Release, *FCC Proposes Licensing and Service Rules for the 4.9 GHz Spectrum Band*, released Feb. 29, 2000, citing FCC's Nov. 18, 1999 *Spectrum Reallocation Policy Statement*.

⁵ *Id.*

⁶ See *NPRM*, at ¶ 43.

provide services only to the major urban areas and are less likely to provide service to the less densely populated portions of each EA. Even the imposition of a build out restriction which would require that service be provided to a proportion of subscribers in an area will not ensure that wireless services are provided to less densely populated areas, especially where an EA includes one or more major cities.

Therefore, in an effort to further the Commission's goal of providing additional services to the public, ATG respectfully submits that the appropriate geographic area should be MSAs and RSAs. This geographic area will afford smaller providers the opportunity to obtain wireless licenses and to provide services to niche markets. This opportunity would not be available if the Commission were to use EAs because EAs contain very large metropolitan cities as well as less densely populated areas.

For example, the EA which contains San Francisco and San Jose, California also contains less densely populated areas, including numerous small cities, towns and rural areas which are geographically separate from those two cities. Therefore, under the Commission's EA proposal, an operator desiring to serve the smaller California communities would also have to bid on the major metropolitan area, which would drive up the price. Another example of an EA containing major metropolitan cities and smaller areas is Portland, Salem, Eugene and Corvallis, Oregon. Once again, an operator desiring to serve the less densely populated areas would not be able to obtain licenses because they would be forced to pay the higher price for the major metropolitan area in order to obtain a license for the smaller cities.

However, if MSAs and RSAs are used rather than an EA, smaller companies would be able to obtain licenses and to provide services to less densely populated areas that do not include major metropolitan areas. ATG believes that the use of MSAs and RSAs would allow more entities to provide more services to the public than using EAs.

IV. The Commission should divide the spectrum into a single group of five unpaired 10 megahertz wide blocks

The Commission seeks comment on the appropriate size spectrum block that should be

used to license the 4.9 GHz band.⁷ ATG submits that the spectrum should be divided into a single group of five unpaired 10 megahertz wide blocks. ATG further believes that there should be no aggregation limit on this spectrum.

Dividing the spectrum into a single group of five unpaired 10 megahertz blocks would allow a single fixed wireless carrier to implement a sectorized, cellular design and frequency re-use of the spectrum. Furthermore, by enabling a single carrier to acquire all of the spectrum in a geographic area and using a design that would enable a more efficient use of the spectrum over a specific geographic area, a licensee would be able to offer a wider selection of services to a wider range of consumers. Dividing the spectrum into a single group would facilitate cooperation between neighboring geographic area carriers of the same blocks with the pre-defined blocks.

Finally, ATG believes that no aggregation limit is needed. The Commission has made available ample spectrum in other bands for licensees to offer services that likely will compete with those offered by 4.9 GHz licensees.

V. No limits should be placed on the ability of licensees to partition service areas and disaggregate spectrum.

The Commission seeks comment “on what limits, if any, should be placed on the ability of licensees to partition service areas and disaggregate spectrum.”⁸ ATG agrees with the Commission’s tentative conclusion that no restrictions should be imposed on the ability of 4.9 GHz licensees to partition their service areas and to disaggregate their spectrum. ATG supports the Commission’s conclusion that “geographic partitioning and spectrum disaggregation can result in efficient spectrum use and economic opportunity for a wide variety of applicants....”⁹

ATG strongly supports partitioning and disaggregation of licenses because these methods lead to the efficient use of spectrum. Geographic partitioning allows for less densely populated

⁷ See *NPRM*, at ¶ 45.

⁸ See *NPRM*, at ¶ 53.

⁹ See *NPRM*, at ¶ 52.

areas to receive the same level of wireless service as major metropolitan areas. Spectrum disaggregation allows for the deployment of a broader mix of service offerings. Thus, ATG supports the Commission's conclusions to allow licensees to partition service areas and to disaggregate spectrum.

VI. The Commission's "safe harbor" provisions should be amended to recognize the rapidly changing technology in the wireless market

The Commission proposes to allow a safe harbor to any licensee of mobile services who can demonstrate coverage of 20 percent of the population in all of its licensed area during the ten year term of its license.¹⁰ ATG believes that the 20 percent coverage requirement will deprive the public that does not live in major cities of service. The ten year period to deploy services is too long for the public to wait for service and will allow licensees to warehouse spectrum.

The service benchmark of 20 percent of the population of an Economic Area is entirely too low. The use of this benchmark could result in a licensee deciding to serve only the densely populated areas, while abandoning the more sparsely populated areas. The licensee would be in technical compliance with the Commission's regulations, however, people living in rural areas would be without service. Furthermore, a 20 percent benchmark would place more heavy compliance requirement on areas with smaller cities – ironically, small cities and towns within an ETA shared with a large city are more likely not to be built out than small towns which share an ETA with fewer larger cities. This rule making presents an excellent opportunity for the Commission to ensure that persons in less densely populated areas receive the same level of service as those in major urban areas.

ATG respectfully suggests that the winning bidder should be required to provide service to 60 percent of the geographic area, rather than a population-based standard for a safe harbor. This standard would ensure that service is provided to less densely populated areas in the same time frame as the more urban areas. In this age of rapid growth in technology, there is simply no

¹⁰ See *NPRM*, at ¶ 59.

reason why rural areas should be left behind.

Also, ATG opposes the safe harbor provision that gives licensees ten years to build out its service area. As the Commission is well aware, the wireless industry is rapidly changing. Many young, vibrant companies are springing up, ready, willing and able to provide services to the public. Ten years is too long for those companies that are prepared to provide service today to wait for the Commission to re-auction these frequencies. Therefore, the Commission should not sanction the warehousing of spectrum by allowing licensees to build out over 10 years.

ATG respectfully suggests that the safe harbor provision should be limited to a five year term. ATG proposes a safe harbor to any licensee who uses its best efforts to provide its services to 60 percent of the licensed area within five years of receiving its license. ATG proposes that licensees file a report with the Commission at the end of year five which demonstrates that they are providing service to 60 percent of their geographic area.

The Commission should forfeit the license of any licensee who fails to provide its services to 60 percent of its licensed area within five years. ATG believes that this proposal will encourage the rapid deployment of new technologies that will benefit the general public.

VII. ATG supports a boundary coordination effort

The Commission seeks comment on the appropriate coordination procedures and criteria.¹¹ ATG supports licensees in adjacent markets coordinating the designs of their systems as follows. ATG proposes a coordination requirement within a distance of 20 kilometers of the edge of a licensed service area, as well as a power flux density limit on the border. A field strength at any location on the border of a licensee's service area shall not exceed 55 bDuV/m, as originally proposed for the 4660-4685 licenses. The Commission should allow licensees operating in adjacent areas to agree to a higher field strength at their mutual borders through interference agreements. ATG believes that coordination between licensees can provide a

¹¹ See *NPRM*, at ¶ 79.

satisfactory means to ensure efficient spectrum use across boundaries and to eliminate harmful interference between systems.

VIII. The Commission should adopt a single standard for small businesses

The Commission seeks comment on the appropriate standard to be used for smaller businesses and whether a single size standard should be used.¹² ATG opposes the use of two standards for “small” and “very small” businesses. ATG suggests that the Commission should combine the standards into one category of “small businesses”. Small businesses, under ATG’s proposal, are any firms with average annual gross revenues for the three preceding years not in excess of \$40 million. ATG proposes that small businesses be provided with a bidding credit of 25 percent. ATG believes that this single standard would be easier to administer. In fact, the Commission has successfully utilized a single standard for small businesses in the auction of authorizations for Basic Trading Areas in the Multipoint Distribution Service.¹³

Furthermore, ATG’s single standard proposal will not adversely impact very small businesses. Additionally, this proposal will encourage small businesses to participate in the auction by allowing them to acquire the financing needed to build out its geographic area. By using a single standard, the Commission can ensure that the winning bidder has the resources to engineer, build out and operate a system using the 4.9 GHz band.

XI. Conclusion

In sum, ATG believes that the auctioning of the 4.9 GHz band will be in the public interest by bringing additional services to the public. The proposed auction will allow new entrepreneurs to acquire spectrum and compete with other wireless services already being provided over other frequencies.

¹² See *NPRM*, at ¶ 101.

¹³ *In the Matter of Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253(rel. June 30, 1995).

Respectfully submitted,

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